APPENDIX

Supreme Court, U. S.
FILED
DEC 1 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-88

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant

—*v.*—

RUBY M. LUCAS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

JURISDICTIONAL STATEMENT FILED JULY 14, 1975
PROBABLE JURISDICTION NOTED OCTOBER 6, 1975

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RELEVANT DOCKET ENTRIES

Complaint (Filed February 8, 1972)

Summons (Entered February 8, 1972)

Pltff's Interrogatories to Deft. (Filed March 31, 1972)

Deft's Motion for Enlargement of time and granted (Filed March 31, 1972)

Answer of Deft. (Filed May 31, 1972)

Preliminary Pre-Trial Order (Entered September 1, 1972)

Pltff's Motion for Extension (October 15, 1972)

Order Granting Pltff's Motion for Extension (Entered October 16, 1972)

Deft's Motion for Summary Judgment (Filed February 8, 1973)

Pltff's Motion for Summary Judgment (Filed February 22, 1973)

Opinion and Order of March 2, 1973 (Entered March 9, 1973)

Order of Chief Judge Pettine remanding to Sec. of HEW (Entered March 9, 1973)

Order of Chief Judge Pettine placing case on Inactive list (Dated March 15, 1973)

Pltff's Petition for Extension of time for further findings of fact (Filed May 25, 1973)

Appearance of Samuel C. Fish and Lawrence E. Burstein (Entered September 4, 1973)

Pltff's Motion for Summary Judgment (Filed July 26, 1974)

Deft's Motion for Summary Judgment (Filed August 13, 1974)

Affidavit of Everett Sammartino (Filed August 13, 1974)

Memorandum and Order of August 30, 1974 for three-judge court

Assignment of Three-Judge Court (Dated September 3, 1974)

PRELIMINARY Pre-Trial Order (Dated September 27, 1974)

Pltff's Motion for Summary Judgment (Filed November 1, 1974)

Dft's Objection to motion for Summary Judgment (Filed November 12, 1974)

Letter from Thomas Pearlman to Judge Pettine requesting that case be tried by one judge (Dated February 5, 1975)

Memorandum of Feb. 20, 1975 remanded back to Judge Pettine

Opinion of Single-Judge District Court of February 25, 1975

Addendum to Opinion (Filed March 17, 1975)

Order of March 21, 1975 granting Pltff's Motion for Summary Judgment

Deft's Notice of Appeal to Supreme Court dated April 15, 1975

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 4845

RUBY M. LUCAS AND DARIN E. LUCAS, infant minors, by their mother and next friend, BELMIRA LUCAS

vs

SECRETARY, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE UNITED STATES OF AMERICA

COMPLAINT

COUNT I

1. The Plaintiffs, RUBY M. LUCAS and DARIN E. LUCAS, are infant minors and are children of their mother and next friend, BELMIRA LUCAS and all are citizens and residents of the City of Providence, State of Rhode Island.

2. The Defendant is the Secretary of the Department of Health, Education and Welfare of the United States of America.

3. This action is brought pursuant to the provisions of Section 205(g) of the Social Security Act, 42 U.S.C. 405(g) to obtain a court review of the final decision of a Hearing Examiner's decision and the decision of the Appeal's Council which decision stands as the final action of the Secretary of Health, Education and Welfare finding that the plaintiffs are not entitled to dependency insurance benefits under the Act as the children of deceased wage earner.

4. Plaintiffs are minor children of the wage earner, Robert E. Cuffie, social security number 039-12-1375.

5. On October 24, 1968, the plaintiffs filed for surviving children's insurance benefits as children of the deceased wage earner Robert E. Cuffie who died June 18, 1968.

6. The application was denied on September 13, 1969, the denial was affirmed on August 31, 1970, and the applicant appealed to the Hearing Examiner.

7. On January 5, 1972, the Appeal's Council affirmed the denial of the hearings examiner.

8. Plaintiffs through their mother and next friend showed overwhelming evidence they were entitled to benefits under the Act.

9. The findings of the Secretary, as above set forth, are not supported by substantial evidence, are in error on a number of important and substantial respects, and upon review of this Honorable Court of the record and the available, credible evidence, the plaintiffs are entitled to the dependency benefits under the Act in that among other things the plaintiffs allege and will prove that:

a) infant children should not be deprived of their social security dependency benefits by reason of:

1. neglect of their natural
2. disability of their natural father

b) the infant children are in fact the result of a common law marriage and should not be deprived of their dependency benefits by reason of alleged illegitimacy.

c) even if said children were deemed illegitimate they should not be deprived of their social security dependency benefits.

d) as the acknowledged children of the deceased wage earner no credible evidence was presented to deprive the infant children of their benefits.

e) Such other and further grounds as the court deems just to prevent these infant minor children from being deprived of their social security dependency benefits.

WHEREFORE, plaintiffs respectfully request a review and a judgment reversing the decision of the Secretary and the entry of a finding establishing his right to these additional benefits and recommitting the matter to the Secretary for computation of the additional benefits to which they are entitled.

By their attorneys,
PEARLMAN & PEARLMAN

BY /s/ T. W. Pearlman
705 Industrial Bank Building
Providence, Rhode Island 02903
421-4343

Trial by jury claimed.

[55] (The following is a transcript of the hearing held before George V. Flavin, a Hearing Examiner of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education and Welfare on March 24, 1971, at Providence, Rhode Island, in the case of Belmira Lucas, Claimant, for Ruby M. Lucas and Darin E. Lucas, Robert E. Cuffee, wage earner, Social Security Account Number 039-12-1375. The claimant, Belmira Lucas, appeared and testified.)

(The hearing commenced at 10:55 a.m., on March 24, 1971)

OPENING STATEMENT BY HEARING EXAMINER:

HEARING EXAMINER: This is a hearing in the matter of Belmira Lucas, a claimant for Child's Insurance Benefits on behalf of Ruby M. Lucas, and Darin E. Lucas, based on the earnings record of Robert E. Cuffee, Social Security Account Number 039-12-1375. It is Mrs. Lucas, is it?

CLAIMANT: Yes.

EXAMINER: You are represented by an attorney this morning, are you not?

CLAIMANT: Yes. (Nodding)

EXAMINER: You are represented by an attorney this morning, are you not, Mrs. Lucas?

CLAIMANT: Yes, I am.

EXAMINER: And for the record would you state your attorney's name?

CLAIMANT: Thomas W. Pearlman.

EXAMINER: And Mr. Pearlman, for the record would you state your full name and your business address, please, if you will.

ATTORNEY: Yes. My name is Thomas W. Pearlman, I am senior partner in the law firm of Pearlman & Pearlman, I'm located at 705 Industrial Bank Building, Providence, R.I., Room 2903.

[56] EXAMINER: Thank you. Mrs. Lucas, the purpose of this hearing is to make certain as you as a claimant who has had an unfavorable determination now has an opportunity to present your case to somebody who has had no previous part in the case. For your information I do not represent nor am I an employee of the office which has previously denied your claim. I will make a new and independent record based on the—decision based on the record that we make here today. Now that record is going to consist of your testimony and that of any other witnesses as well as certain papers which are received into evidence. Included among these papers will be some that were obtained by the office which did previously handle your case. I want you to feel at ease here today because we're not going to follow any great formality. We'll be formal only to the extent that your testimony will be under oath and this young lady is going to make a word by word record of what happens here today. Now bearing that in mind when you answer my questions or the questions of your attorney will you please keep your voice up so she can hear you?

CLAIMANT: Yes. (Nodding)

EXAMINER: Will you do that for us?

CLAIMANT: I'll try.

EXAMINER: Fine. Now my first knowledge of this case came after you filed a request for a hearing and at that time I had the other office send me its complete file. After examining that file I have selected [57] certain papers which appeared important for this record. These papers have been numbered and Mr. Pearlman, have you had an opportunity to look them over this morning?

ATTORNEY: Yes, I have.

EXAMINER: Do you have any objection to any of them being admitted into the record?

ATTORNEY: No, I do not.

EXAMINER: All right, there being no objection the list of proposed exhibits will be accepted into evidence and marked as exhibits numbered one through twenty-six. Do you have any other written evidence you would like to submit to me this morning, Mr. Pearlman?

ATTORNEY: Well it may be redundant but I do have a statement from the Lying-In Hospital records office.

EXAMINER: All right, why don't we—

ATTORNEY: Which I might submit, and there may be some other documents.

EXAMINER: Will you let me know if you desire to submit some further information—all right? Let the record show that the one-page document from the Providence Lying-In Hospital dated March 24, 1971, will be accepted into evidence and marked as Exhibit Number 27.

ATTORNEY: Thank you.

EXAMINER: Now, Mrs. Lucas, I'm going to recite my understanding of what has happened in your case up until today. Would you listen to this and tell me if I'm correct. You filed an application on October 24, 1968 [58] for Children's Insurance Benefits on behalf of Ruby Lucas and Darin Lucas, based on the earnings account of Robert E. Cuffee, Social Security Account Number 039-12-1375. You were notified by a letter that it had been determined that the children did not have the necessary relationship of Mr. Cuffee to qualify for benefits on his account and you then requested reconsideration and you were notified on reconsideration the initial determination had been affirmed and it was subsequent to that that you requested a hearing, is that correct?

CLAIMANT: Yes. (Nodding)

EXAMINER: All right. Now the issue to be determined by me is whether Ruby Lucas and Darin Lucas are entitled to Children's Insurance Benefits based on the earnings record of Robert Cuffee and in turn this issue is dependent upon specific findings as to whether Ruby Lucas and Darin Lucas are the children of Robert E. Cuffee, as defined in Section 216(e) of the Social Security Act, as amended. Would you stand up for me, please.

The claimant, Belmira Lucas, having been first duly sworn testified as follows:

EXAMINATION BY HEARING EXAMINER

Q All right, would you sit down and tell us your full name and your address, would you please?

A Belmira Lucas, 142 Dodge Street, Providence, Rhode Island, Code 02907.

[59] Q And, Mrs. Lucas, were you ever married to Robert E. Cuffee?

A No, I was not.

Q You were never legally married?

A No.

Q But you did live with him?

A Yeah, I lived with him.

Q What years did you live with him?

A I lived with him from 1946 up to 1968.

Q Nineteen—

A Well 1968.

Q Sixty-eight?

A Yes.

Q And during that period of time were there some children born of your relationship with Mr. Cuffee?

A Yes there was.

Q And who are these children?

A Ruby Marie and Darin Edward.

Q Can you give me their dates of birth?

A Ruby Marie was born on the 7th of February 1953—Darin was born October 28, 1960.

Q All right. Now whether or not your husband, Mr. Cuffee, ever acknowledged these children as being his children in writing, do you know whether he ever acknowledged in writing?

[60] No he has never acknowledged it in writing.

Q But as I understand it, and correct me if I'm wrong, during the time that you lived together he treated them as his children and he supported them?

A Oh, definitely so.

Q Now at some time did your husband leave the household where you and the children were living?

A Do you mean did we break up?

Q Yes.

A Oh, well, towards the end—towards the end we were see-sawing back and forth.

Q Uh huh.

A And that was after the children were born.

Q I understand that.

A Yes.

Q Well I say some time did he leave in the summer of—

A Yes

Q Now where did he live out?

A In—

Q Can you tell me approximately when he left the house that you and your children lived in and went to live with his mother?

A Well he went to live with his mother of the New Year of Sixty-eight, he left and went to live with his mother.

Q In the early part of 1968?

[61] A Sixty-eight.

Q When did he die, Mrs. Lucas?

A He died I think it was—let me see, the dates I'm not too good at.

Q That's all right, you can refresh your recollection—

A I'll have to retract that. He left and went to live with his mother—he's been dead now either two or three years. Two years prior to his death is when we separated, so that would be—

Q Three years prior to his death?

A Two or three years prior to his death is when we separated.

Q I see.

A So that would be I'd say, Sixty—Sixty-six, Sixty-seven.

Q All right. He died in 1968?

A Right.

Q Pardon me.

A June of Sixty-eight.

Q All right. Now during the time that he lived with his mother and lived apart from you and the children did he contribute to the support of the children.

A He certainly did.

Q And can you tell me how much or approximately how much, and how did he contribute? What I mean by that is did he pay you in cash?

A Yes he did. He did not pay me—he did not give it to me directly.

Q Who did he give it to?

[62] A But he'd give it to his daughter.

Q Who is?

A Ruby. He would give her if he seen her, say like on Monday, he would give her ten or fifteen dollars. If he seen her on toward the end of the week he'd give her another ten or five or whatever may be.

Q I see.

A It would average on the space of twenty-five or thirty dollars a week.

Q Well I assume that she then would tell you whether she received money from her father.

A Yes she would.

Q So that as you tell me, that he never made any payment direct to you?

A Direct to me, no. He sent it—

Q Would he give this money to his daughter and tell her to see that it was used for—

A For the daily use.

Q For the use of his two children?

A Yes.

Q Well, now, what bothers me just a little bit, Mrs. Lucas, in this record that we have in front of us is that there is some conflicting evidence. Apparently his mother in certain instruments which she has filed with the Social Security Administration indicates that for a number of [63] years her son didn't work.

A No he didn't.

Q And that she contributed to his support.

A She certainly did.

Q And she apparently has no records and no memory as to how much she contributed to him. What puzzles me a little bit is where he would be getting the money to contribute regularly to the support of his children.

A From his mother.

Q From his mother?

A From his mother. She has always—he even when he worked, even when we were together she still kept him with money.

Q She kept him supplied with money?

A She worked for no one but Robert.

Q Was he her only child?

A The only child.

Q Have you talked with her about her memory as to how much he had contributed?

A Yes, I am sorry—I told my attorney, Mr. Pearlman, I'm sorry that my daughter had destroyed it because when I first got the letter saying that it was not granted I went to her—unbeknown to her mother I had it tape recorded and I asked her why did she do it?

Q Uh huh.

A It all seemed to bear out to one thing—you do not have him, I don't have him and you shall have no—

Q I see. So it's a personal thing.

[64] A It's a personal thing.

Q I understand. Now there's some information in the file or some indication in the file that in the same household with the mother, with his mother and himself his aunt lived.

A Aunt. Yes (nodding)

Q Now do you have any information relative to whether or not she contributed at all to his support?

A Yes she did.

Q Well, again, from the information which is in the file it appears that she has said that she has no recollection or no information of any money that she did give to her nephew.

A But she did.

Q She did contribute to him?

A Mostly.

Q Now, Mrs. Lucas, during the last, let's say last year that your husband lived, that Mr. Cuffee lived, do you know whether he actually did any work himself or not?

A No, in the last years, I'd say in the last year to two he was unable to.

Q He wasn't able to work?
A He wasn't able.
Q I see. So that if I understand your allegation then, it is then that he contributed to his daughter—to the support of his daughter and his son, and he did this quite regularly?
[65] A Regularly.
Q And so far as you know the money he received and to enable him to do this, was received from his mother.
A His mother and his aunt.
Q And that his mother is blocking, or not say blocking, is reluctant to give information because she didn't want to be helpful to you at all?
A That's right.
Q I don't have any other questions, Mr. Pearlman, is there something else you'd like to bring out from his lady?
ATTORNEY: Yes, I'd like to clarify just a couple of things which I think might be helpful. Mrs. Lucas, the aunt of the late Robert Cuffee, who lives with Robert Cuffee's mother, that's Madeline Cuffee's—what is her name?
A Hazel Cuffee.
Q And Hazel Cuffee always worked. Is that right?
A Oh, yes.
Q And isn't it a fact that Hazel Cuffee with her money that she earned working would pay all the household expenses?
A Oh, yes, she—
Q Of Madeline Cuffee and Hazel Cuffee and Robert Cuffee when he was home?
A Oh, yes, everything.
[66] Q So that the money that Robert Cuffee's mother earned was all given to Robert?
A It was all Robert's more than any one thing else.
Q Mrs. Madeline Cuffee had no expense of her own because all the household expenses were paid for by the aunt.
A I'll put it this way—all her household expenses were in her name but Hazel Cuffee upheld the expenses.

Q I see. Now, isn't it a fact you told me on one occasion that you know of and there may have been more, that Robert Cuffee filed an Internal Revenue Tax Return?
A Oh, yes, he did.
Q Where he named the children as dependents?
A Yes, only Ruby was born at the time and he claimed Ruby but was unable to claim her so he had to pay that money back.
Q Have you been able to find any return record of that tax return?
A No, I haven't.
Q Now in the file here there is an exhibit—number sixteen, which appears to be a record of the funeral of the late Robert E. Cuffee.
A Yes.
Q And names as his two children, Ruby Marie and Darin Edward—
A Yes.
Q Are those the same two children for whom you are asking for support?
A Yes.
[67] A Through the Social Security?
Q Now who arranged for this funeral?
A His mother arranged for the funeral.
Q And you didn't give this information—
A His mother and Lloyd Carl.
Q Lloyd Carl is the mother's—
A He's deceased.
Q He's deceased now but he was the brother—
A No he wasn't his brother.
Q Wait a minute—he was the brother of Madeline Cuffee?
A No he wasn't, he was Madeline Cuffee's nephew, but due to his age we always called him Uncle Lewey.
Q I see.
A He wasn't her brother, he was her nephew.
Q And is it your belief and understanding that the information concerning these two children, which appears in Exhibit 16, was furnished by Robert Cuffee's mother and so-called Uncle?
A Lloyd Carleton.

Q Lloyd Carleton?
A Yes. I had no part in the funeral arrangements at all.
Q Now did you go to the funeral?
A Yes I did.
Q Did the two children go to the funeral?
A All the children went.
Q And do the two children, Ruby and Darin, visit the grave often?
A They're always at the grave because it's so close by.
Q All right. Now during Robert Cuffee's lifetime did he give any presents to the two children in question, Ruby and Darin?
A Well he gave them everything that they wanted—birthdays and Christmas he would get my daughter—he would give my daughter the money and let her go down and she would pick out what she felt the children needed.
Q And could you tell this honorable body how he names—the names were chosen for these two children when they were born?
A Well they were chosen by—the first names was chosen by the godmother, the second name was chosen by the father. Edward represented Robert's middle name, Marie represented my mother's name and she wanted to have it.
Q And did Mr. Cuffee take you to the Lying-in Hospital in both cases?
A Yes he did.
Q Did he visit you every night?
A He was a steady visitor.
Q Did he buy things for the children?
A Oh, yes.
Q Now did the children refer to him as Daddy during their lifetime?
[69] A Yes.
Q And did he refer to the children as son—his son and his daughter?
A Oh, yes.
Q Now this Mr. Carl, Lloyd Carl is no relation to you, is he?
A Oh no, he isn't.

Q And when he signed a statement that he was—signed Bobby—Exhibit number twenty-one, dated January 27, 1969, where he indicated that Darin and Ruby Lucas were the children of Robert Cuffee, he did that on his own?
A Oh, yes, and so did—you have another affidavit there and that is under Claurie Perry, is her marriage name now. That is a relative of his, that is Lloyd Carl's daughter.
Q She is no relation to you?
A No relation whatsoever to me.
Q And you also stated your landlord, Mr. Isadore Sheffness—
A Mr. Isadore Sheffness.
Q To furnish an affidavit statement?
A Yes, he knows the relationship.
Q But he didn't want to get involved?
A No he didn't, not that he didn't want to get involved, it wasn't a matter that he didn't want to get involved, it was just a matter—that he kept saying yes, yes, yes, but in his line of work he just kept forgetting to sign it and send it in, or whatever was requested in.
[70] Q Do you think probably the reason might be that Mr. Cuffee's work was on part-time and they might not have checked—collected the Social Security?
A I couldn't say.
Q That all the money that Mr. Cuffee earned while working for Mr. Sheffness was not turned over—
A Well Mr. Sheffness would come to the house, he would bring Robert—bring Robert home. He would sit there and he would figure out what he owed him and whatever he owed him he would give to me and in turn the rent would come out of that.
Q So that—now Mr. Cuffee also during his lifetime opened a charge account for these children, is that right?
A Yes, he had a charge at Gray's which is now out of business.
Q And you tried to determine if there were any records but you were unable to because they are out of business?
A It's too long.

Q So in answer to your question there was no written acknowledgement of these children, you meant to say that you were unable to obtain any written acknowledgement but there may be some on records which are lost or destroyed or somewhere else?

A Yes.

Q And there are two records that you know of that one's [sic] existed where he acknowledged these children?

A Two.

[71] Q One was the Internal Revenue?

A Yes.

Q The other was the charge account he had at Gray's?

A Yes.

Q He also had a charge account with a door to door salesman?

A Yes. I don't think of his name but he used to have him come to the house for his shoes and he would pay him so much every week.

Q And you have been unable to get that record?

A I can't—can't remember his first name.

Q Well you're certain that Mr. Cuffee gave both these children—

A He certainly did.

Q And always acknowledged them as his own?

A Yes.

Q That's all.

EXAMINER: There's just one thing I'd like you to clear up for me if you can, Mrs. Lucas, I notice in one exhibit here which purports to be a certification of the record of birth of Darin Edward Lucas from the City Registrar in Providence, Rhode Island, and I might say, Mr. Pearlman, I have not seen this record and I do not know whether it is an accurate certification or not but perhaps this lady can clear it up. On the certification it says the name of the mother was Belmira Gonsalves.

CLAIMANT: My maiden name.

Q Now it says the name of the father was Raymond Lucas. Who is Raymond Lucas?

[72] A Now that was what I was trying to tell Mr. Pearlman—I couldn't remember. I have the habit, or I had the habit—everything I did, I did under my name.

Q I see.

A Never anything that carried his name. Secondly I couldn't even remember from the first birth as to when I went to the hospital whether I gave Robert's name or whether—in order to have no repercussion I gave Raymond's name.

Q Who was Raymond?

A That was my husband.

Q That was your—that was your first husband?

A My first husband.

Q And is he alive?

A No he isn't.

Q How long is he dead?

A He's been dead six years.

Q Six years. I see. All right, so that in any event when the birth was recorded you might have given the name Raymond Lucas?

A Yes.'

Q But you say now that, of course, the father was not Raymond?

A Oh, no it wasn't Raymond.

Q I'm satisfied in my own mind to be perfectly frank with you and Mr. Pearlman, I might say this to you, I'm satisfied in my own mind that this man was the father of these two children; the crux of this whole matter appears to be whether or not he was contributing to the support of these [73] children at the time of his death. We have your evidence, of course, and you can, I'm sure, appreciate the fact that there is some conflicting evidence in the file, Mr. Pearlman.

ATTORNEY: (Nodding) Yes.

EXAMINER: Is there anything further that could be brought out this morning?

ATTORNEY EXAMINES THE CLAIMANT

Q On that latter issue well I'd just like to get this in the record. Now, Mrs. Lucas, you testified before that you and Mr. Cuffee lived together up to two years prior to Mr. Cuffee's death?

A Yes, around that time.

Q Now up until that time did he support these two children regularly?

A Robert has always supported his children. He's never denied his children. He has always supported them.

Q But I'm asking you up to the time you separated two years prior to his death, did he?

A Yes he did.

Q What was the average amount he gave?

A Oh, well at that time it was whatever he made—if he made fifty, if he made sixty, because he did wallpapering and painting and whatever he made he brought it home.

Q And were there times when he didn't work did he still give you money?

[74] A Yes, he did. He certainly did even when he wasn't working and we was together he got the money and he got it from his mother.

Q Now after you became separated in the two years prior to his death, did Mr. Lucas continue any support —any payments?

A Mr. Lucas?

Q Pardon me, Mr. Cuffee. Can you tell the honorable party just how—what he did?

A In what way?

Q How he supported them—how much money he gave?

A Oh, he would give the money to his daughter if it was—sometimes it would be in a lump sum, sometimes it would be ten or fifteen dollars, sometimes five dollars but at the end of the space of a week it would amount to about twenty or twenty-five dollars and he would give this to her to give to me for them.

Q And how long did this continue during that two years prior to his death?

A I would say up until about three or four weeks before he passed away because she hadn't been over there, she hadn't seen him.

Q I see. In other words he would give this money to the oldest child?

A To Ruby.

Q When he went over—

A To visit him.

[75] Q And at that time Mr. Cuffee was living?

A With his mother.

Q With his mother?

A Uh huh.

Q Did he ever come during that period to your house?

A No, he wouldn't come to the house but he would come outside.

Q And would he give money then?

A He would give it to her. You see he didn't know what apartment I lived in and I guess he was a little embarrassed under the conditions that he was under to ask anybody.

Q And that's why Mr. Cuffee had become a heavy drinker?

A Yes.

Q And that was the reason for your separation?

A That's it. He had gotten along fine with his children.

Q Who gave him the money for his drink?

A His mother.

Q And how much on the average of a week would she give him?

A Oh, she would give him on the average anywhere from forty-five to fifty; plus she would buy his liquor.

Q Now is it possible that he gave money to Ruby without his mother's knowledge?

A Oh, she didn't know. No, she didn't know that he was—that this money was going towards his children's support.

[76] Q During this two year period?

A She didn't know that until I went to the house and told her.

Q Was this after his death?

A This was after his death. I said well he thought enough of them to support his children so why is it you are blocking everything now and her answer was you took him away from me, now neither one of us have him and you shall have nothing of his now.

Q Robert Cuffee was an only child?
A An only child.
Q And his mother was very jealous of him?
A She was very possessive.
Q And she was over-protective?
A Yes.
Q Is that right?
A Like I said, everything would have been all right. I think everything would have been accepted if I in turn had gave her my oldest daughter, Jane. In other words give her Jane in return for Robert so that she would not be left without anything but when I took Jane away from her it started everything rolling downward.
Q And there was a strong jealousy between you and—
A And her.
Q And of the mother—Robert Cuffee, but there is no question that he gave regular support payments for the two years prior to his death up until three weeks before he died?
[77] A That's right. Those children didn't want for anything as long as he was living.
Q What did the amount of money that he gave for the support of these children during that two year period average?
A I'd say it averaged anywhere between twenty-five and thirty dollars a week; very seldom that it went below that.
Q And with that money would you and the children go shopping for food? What did you use it for?
A No. Ruby was old enough to get—if there was something that they needed she was old enough when he did have the money and would tell her go ahead and get what she needed or to get her brother anything he needed in the form of clothes or shoes. She was old enough to take him.
Q How old was Ruby during this period of time?
A Fifteen—sixteen—she's now eighteen, so she was old enough and as far as the marketing or anything like that, well I did that I mean, but as far as clotheswise, shoes, or anything, I mean—

Q She bought with this money all her clothing for her and her brother?
A Well she knew that her father gave her this money to give to me for their use so, therefore, this was their money.
Q And did she also buy some groceries and things?
A Well, yes, I did the marketing.
Q Would she give you any of this money for the marketing?
A Yes.
[78] ATTORNEY: That's all.
EXAMINER: Is it your desire, Mr. Pearlman, to make a closing statement or file a brief in this matter?
ATTORNEY: Well I'd like to reserve that right. I'd like to talk with your honor concerning any issues that might be troubling you that I may be able to do. For example in a case of this kind I would like to before closing make an offer of proof if there is any question in your honor's mind concerning the question of the fact that he supported these two children I would offer to bring in the child, herself, who received this money and testify. I submit that that is what she would testify to if your honor needs an offer of proof but the question in my mind—but I know that the—your honor, that the practice of a hearing body is not to get the children involved unless it's absolutely necessary.
EXAMINER: Oh, yes, I would hesitate to have her testify unless you feel, Mr. Pearlman, that this is what she would testify to.
CLAIMANT: May I say something?
EXAMINER: Yes.
CLAIMANT: You have an affidavit in there from a George Halloran. Now I do not know if George Halloran is at this address because I am not associated with him but this was Robert's bosom pal right up until the day he died.
EXAMINER: Yes.
[79] CLAIMANT: Now George Halloran knows the whole circumstances to the point that that woman never left the house in the morning to go to work that she

didn't leave him the money, set it on the table, his cup of coffee and his liquor.

EXAMINER: Uh huh.

CLAIMANT: And when she came home at night she had an armful of liquor, more money for Robert Cuffee and, of course, no food because they were too busy drinking. The mother is an alcoholic, the aunt's an alcoholic and the son was an alcoholic and this was their life, so you can draw the picture right there. And George Halloran knew everything that went on.

ATTORNEY: Well, your honor, I would like to suggest, if it would be the same to your honor, I would submit a signed affidavit of what the daughter would testify to but I know and I submit and I offer that she would testify to the facts the two children were supported.

EXAMINER: Yes.

ATTORNEY: I could either bring her in or an affidavit.

EXAMINER: I wouldn't think that it would be necessary, Mr. Pearlman, to bring this girl in. I don't want to open up any wounds.

CLAIMANT: I was getting ready to say that because there are a lot of complications now.

EXAMINER: Certainly. If you want I will do this, why don't I withhold my decision in this matter for a period of ten days, would that be sufficient for you to talk to the girl?

ATTORNEY: Sure.

[80] EXAMINER: And find out from her—you see, the thing that puzzles me and the thing I'm faced with and I'm sure you as an attorney appreciate the fact this lady comes in and certainly I'm not going to say that I don't give some credence to her testimony, on the other hand her testimony is almost completely contradicted by contacts with the Social Security Administration has had with the mother of Robert Cuffee. What I would be interested in, Mr. Pearlman, is any information that this girl might have, and certainly during the period she was alert and old enough to be able to have a memory of the amounts that her father would give

her, and the occasions on which the father would give her this money so I will withhold my decision then for a period of ten days and if you get me a form of an affidavit from her, if you will.

ATTORNEY: Your honor, what address would you like me to submit this to?

EXAMINER: We'll give you a return envelope and you can send it in.

ATTORNEY: All right I'd like that opportunity.

EXAMINER: All right, fine, if there's nothing further to come before the hearing I'll declare the hearing closed in the taking of the oral testimony but I will withhold my decision until you have an opportunity to submit an affidavit from Ruby, is it?

[81] CLAIMANT: Too bad she can't get down here.

(Hearing closed at 11:30 A.M., March 24, 1971 at Providence, Rhode Island)

CERTIFICATION

I have read the foregoing transcript and hereby certify that it is a true and complete record of the hearing.

/s/ Margaret K. Mruarty
Hearing Assistant

EXHIBIT 10

[SEAL]

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

STATEMENT OF CLAIMANT OR OTHER PERSON

Name of wage earner or self-employed person
Robert E. Cuffee
Social Security Account Number
039-12-1375

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

1) When did Mr. Cuffee stop contributing for children? Mr. Cuffee gave me at least $20-$25 per week almost until the week he died.

2) What were the names and addresses of his employers from June 1966 to June 1968? He was self-employed as a paper hanger and painter. He also got $50-$60 per week from his relatives.

3) What were dates he worked for each employer? It varied and since he was drinking heavily at this time no records were kept.

4) What were his earnings from June 1967 to June 1968? His earnings varied, as he charged according to rooms and sizes of them and he always had money in his pocket supplied by his family.

From 1965 to June of 1968, I worked for Cable Electric Company, Daboll Street, Providence, R.I. and earned $36 per week take home pay. This was my only income

other than the weekly support of the children averaging $20 to $25 per week from Robert E. Cuffee. From this money I had to pay $20 per week rent plus heat for my tenement at 49 Brattle St. Providence, R.I.

Mr. Cuffee and I had lived together as man and wife from 1946 to about December, 1965 when he went back to live with his mother and aunt on Lockwood Street in Providence. He would visit with me at least two or three times a week to see his children. And he gave at least $20 to $25 per week for their support. They called him Daddy and he called them son and daughter. They visit their father's grave in North Burial Ground in Providence. He bought them presents at birthdays, holidays and Christmas. He took them out for ice cream and introduced them always as his own children. When we lived together, he turned over his whole pay to me to run the house. He bought the children clothes.

Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.
Signature of person making statement—

/s/ Belmira Lucas
142 Dodge St.
Prov., R.I. 02907

Feb. 23, 70

EXHIBIT 11

[SEAL]

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

STATEMENT OF CLAIMANT OR OTHER PERSON

Name of wage earner or self-employed person
Robert E. Cuffee
Social Security Number
039-12-1375
Name of person making statement (*If other than above wage earner or self-employed person*)
Thomas W. Pearlman

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

Was there any insurance? NO
Was there a bank book? NO
Any medical insurance? NO
Income tax return? NO
Any letters regarding this? NO

Where did Mr. Cuffee obtain money? which he contributed to weekly support of children? From his mother and Aunt.

Our records show that he did not work after 1966. Please enter below the sources from where such money was obtained, such as names and addresses, etc. Miss Madeline Cuffee, Miss Hazel Cuffee (new address) Ford St. old address Lockwood St.

From 1965 to June of 1968, I worked for Cable Electric Company Daboll St., Providence, R.I. and earned $36 per week take-home pay. This was my only income other than the weekly support of the children averaging $20-$25 per week from Mr. Robert E. Cuffee. From this money, I had to pay $20 per week rent plus heat for my tenement at 49 Brattle Street, Providence, R.I. Mr. Cuffee and I had lived together as man and wife from 1946 to about December 1965 when he went back to live with his mother and aunt on Lockwood Street in Providence. He would visit with me at least two or three times a week to see his children. And he gave at least $20 to $25 per week for their support. They called him Daddy and he called them son and daughter. They visit their father's grave in North Burial Ground in Providence. He bought them presents at birthdays, holidays and Christmas. He took them out for ice cream and introduced them always as his own children. When we lived together he turned over his whole pay to me to run the house. He bought the children clothes.

Knowing that anyone making a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

Signature of person making statement—

/s/ Belmira Lucas
142 Dodge St.
Prov., R.I. 02907

4/21/70

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING EXAMINER'S DECISION

In the case of

Belmira Lucas
(Claimant)

Robert E. Cuffee
(Wage Earner) (Leave blank if same as above)

Claim for

Child's Insurance Benefits
039-12-1375
(Social Security Number)

This matter is before the Hearing Examiner as a result of a request for hearing filed on September 28, 1970 by Belmira Lucas, the claimant, who is dissatisfied with the prior determination denying her application for children's insurance benefits filed by her on behalf of Ruby M. Lucas and Darin E. Lucas.

Belmira Lucas filed an application for surviving child's insurance benefits on behalf of Ruby M. Lucas and Darin E. Lucas on October 24, 1968. By letter dated September 13, 1969, she was advised that her application had been denied. She filed a request for reconsideration and by letter dated August 21, 1970 was advised that the initial determination was affirmed.

STATEMENT OF ISSUES

The general issue to be determined is whether Ruby M. Lucas and Darin E. Lucas are entitled to children's insurance benefits based on the earnings record of Robert E. Cuffee under Section 202(d) of the Social Security Act, as amended. The specific issues on which findings

will be made and conclusions will be reached are whether Ruby M. Lucas and Darin E. Lucas are the children of Robert E. Cuffee as defined in Section 216(e) of the Social Security Act, as amended.

SUMMARY OF THE TESTIMONY OF BELMIRA LUCAS

At the hearing Belmira Lucas testified substantially as follows: She was never married to Robert Cuffee but lived with him from 1946 to 1968. Two children were born of this union. Their names are Ruby Marie Lucas and Darin E. Lucas. Robert Cuffee never acknowledged in writing that they were his children but always treated them as his children. She and Robert Cuffee separated two years before he died. He then lived with his mother. He died in June, 1968. While they were separated he contributed to the support of the children. He gave money to Ruby Lucas each week. This averaged $25 to $30 a week. Robert Cuffee did not work for some years before he died. He got the money he gave to his children from his mother. He was an only child. His mother will not assist in the prosecution of this claim. His aunt lives with his mother and she also gave Robert Cuffee money. He was unable to work for the last few years of his life. His aunt paid all the household expenses while she, Robert Cuffee, and his mother lived together. The money earned by his mother was all given to Robert Cuffee. On one occasion Robert Cuffee filed a federal income tax return and claimed Ruby as a dependant. This was before Darin was born. He was notified that he could not claim her as a dependant. The children are named in the obituary notice (Exhibit 16.) The mother arranged for the funeral and gave the information to the funeral director. Robert Cuffee always called the children his son and daughter. He opened a charge account for the children. When Darin was born, she might have given the father's name as Raymond Lucas. Raymond Lucas was her husband. He has been dead for six years. Her maiden name was Belmira Gonsalves. Darin's father was Robert Cuffee. Up until they sepa-

rated Robert Cuffee supported the children. Even when he wasn't working he gave her money which he got from his mother. After they separated he gave all contributions to his daughter. He gave her an average of $20 to $25 a week right up to three or four weeks before he died. His mother gave him $45 to $50 a week and also bought his liquor. His mother did not know he was giving money to his children. Robert Cuffee, his mother, and his aunt were all alcoholics.

SUMMARY OF THE RECORD

In an application for lump sum death payment filed by Madeline Cuffee on August 2, 1968 it is stated: "Robert had not worked the last six or seven years at least." (See Exhibit Number 1.)

It appears that Robert Edward Cuffee applied for a Social Security Account Number on October 13, 1942 and that number 039-12-1375 was issued to him. (See Exhibit Number 2.)

In an application for surviving child's insurance benefits filed by Belmira Lucas on October 24, 1968 it is stated: "I lived with Robert Cuffee in a common law union. The two children are of this union. I started living with the W.E. in 1948 and separated from him in 1966." (See Exhibit Number 3.)

In a statement dated November 1, 1968, Clara Carle (Mrs. Clara B. Perry) advised that Robert Cuffee acknowledged Ruby and Darin Lucas as his own children. (See Exhibit Number 26.)

In a statement dated December 8, 1968, Belmira Lucas advised that the two children were of the common law union between Robert Cuffee and herself which began approximately 1948 and ended in 1966. She stated that the wage earner and she had never married since she was not free to marry. She listed the names and addresses of people who could attest to the fact that the children were the children of Robert Cuffee. (See Exhibit Number 23.)

In a statement dated January 7, 1969, Lloyd E. Carle advised that as far as he knew Darin and Ruby Lucas were the children of Robert Cuffee. (See Exhibit Number 21.)

In a statement dated June 25, 1969, Belmira Lucas advised: "Robert Cuffee worked but was self employed from 1964 to about the middle of 1966 which he gave me between $45-50 a week, when his health failed and he was unable to work steady. Then it varied between $30 and $35 until he couldn't work so from the end of 67 until his death in 68 he was unable to support them, but I worked." In a further statement regarding contributions dated June 25, 1969, Belmira Lucas advised that the claimant's names were Ruby and Darin Lucas, that the contributions to the claimant's support by Robert E. Cuffee ended in 1967, that there was a break in contributions in 1967 and 1968 and that the reason for this was that Robert Cuffee was in ill health. (See Exhibit Number 19.)

In a certification of contents document it is reported that in a birth record filed with the City Registrar of Providence, Rhode Island as document #8263 it is stated that Darin Edward Lucas was born at Providence, Rhode Island on October 28, 1960, that the name of the mother was Belmira Gonsalves and that the name of the father was Raymond Lucas. (See Exhibit Number 19.)

In an obituary notice reporting the funeral of Robert E. Cuffee, Ruby Marie and Darin Edward Cuffee are listed as survivors. (See Exhibit Number 17.)

In a statement dated January 26, 1970, George Harold advised that Robert E. Cuffee was the father of Ruby Lucas and Darin Edward Lucas, that he acknowledged the children as his own, gave them gifts, gave Belmira Lucas money from time to time for the support of these children, and told her, Clara Perry [sic], frequently that he was the father of the children. (See Exhibit Number 15.)

In a report of contact, which is undated, it is reported that in a telephone conversation apparently in June, 1970, Hazel Cuffee advised that she could tell nothing about money given to her brother from June, 1967 to June, 1968. (See Exhibit Number 14.)

In an undated statement, Madeline Cuffee stated: "I allowed my son to live with me for a while. I fed him and occasionally I gave him small sums when he wasn't working. I have no records of any sort and I am a sick woman unable to recall any periods of time, exact dates or amounts of money. He did live for several years up to the time of his final illness." (See Exhibit Number 12.)

In a statement dated February 23, 1970, Belmira Lucas advised that Robert Cuffee gave her at least $20 to $25 a week almost until the week he died. She also advised that from June, 1966 to June, 1968 he was self employed as a paper hanger and painter and that he also got $50 to $60 a week from his relatives. It is interesting to note that Belmira Lucas stated as follows. "Mr. Cuffee and I had lived together as man and wife from 1946 to about December, 1965 when he went back to live with his mother and aunt on Lockwood Street in Providence. He would visit with me at least two or theree times a week to see his children. And he gave at least $20 to $25 per week for their support. They called him Daddy and he called them son and daughter." (See Exhibit Number 10.)

In a statement dated April 21, 1970, Belmira Lucas advised that Robert Cuffee obtained money from his mother and aunt which he contributed to the weekly support of his children. It is interesting to note that she again gave the same information that is quoted immediately above. (See Exhibit Number 11.)

Subsequent to the hearing, an affidavit dated March 29, 1971 and signed by Ruby Marie Lucas was submitted. In this affidavit she advised that she was the daughter of Belmira Lucas and the late Robert Edward Cuffee, that two years prior to his death Robert Cuffee was separated from her mother and that after the separation he gave

her an average of $20 to $25 a week for support and personal needs for herself and her brother, Darin Lucas. She stated that he would usually give her the money in cash when she went to visit him and that he told her he didn't want his mother to know this as she would be very angry if he used the money given to him by his mother for the support of his children. She advised that Mr. Cuffee's mother and aunt both have drinking problems and that the mother is very jealous of her mother and that there was ill feeling between them. She stated that when Mr. Cuffee did not work he got all his money from his mother and that his mother did not need any money to run the house because her aunt, or Robert Cuffee's sister, used all her earnings for running the mother's home. She advised that when Mr. Cuffee was working at the Providence Journal he claimed her as a dependent on his federal income tax, that he had a charge account at Gray's Clothing Store for herself and her brother and that he arranged with a door to door salesman so that the children could buy whatever clothing they needed right up until the time of his death. (See Exhibit Number 28.)

DISCUSSION OF THE EVIDENCE

Section 202(d) of the Social Security Act, as amended, as applicable here, provides that under specified circumstances a child (as defined in Section 216(e)) of an individual who dies a fully or currently insured individual might be entitled to the payment of child's insurance benefits.

Section 216(e) of the Act defines the term child.

Section 216(h)(3) of the Social Security Act provides that an applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under Paragraph (2), shall nevertheless be deemed to be the child of such insured individual if such insured individual has acknowledged in writing that the applicant is his son or daughter, has been decreed by a court to be the father of the applicant, has been ordered by a court

to contribute to the support of the applicant because the applicant is his son or daughter, or such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of the applicant at the time such insured individual died.

Certain facts in this matter are undisputed. They are that Robert Cuffee and Belmira Lucas were never legally married, that for some years prior to his death Robert E. Cuffee was not living with Belmira Lucas or Ruby M. Lucas and Darin E. Lucas and that Robert E. Cuffee died on June 18, 1968. Efforts to obtain some written acknowledgement by Mr. Cuffee that he was the father of Ruby M. Lucas and Darin E. Lucas have been unsuccessful. In order that it might be found that Ruby M. Lucas and Darin E. Lucas are entitled to children's insurance benefits based on the earnings record of Robert E. Cuffee, two facts must be established; namely, (1) that there is sufficient satisfactory evidence to establish that Robert E. Cuffee was the father of Ruby M. Lucas and Darin E. Lucas and (2) that Robert E. Cuffee was contributing to the support of Ruby M. Lucas and Darin E. Lucas at the time that he died.

While the fact that it has been reported that on the birth record of Darin Edward Lucas it is stated that the name of the father is Raymond Lucas (See Exhibit Number 19) casts some doubt on the question of whether Robert E. Cuffee was the father of Darin Lucas, the thrust of the evidence rather clearly indicates that he was the father of both Darin Edward Lucas and Ruby Marie Lucas. However, in this particular matter a finding that he was the father of these children is academic unless it can be established by the evidence that he was contributing to the support of these children at the time that he died.

There are certain inconsistencies in the information supplied by Belmira Lucas which casts rather grave doubt on the fact that Robert Cuffee was contributing to the support of these children at the time that he died. Unfortunately, when she filed her application for surviving child's insurance benefits on October 24, 1968, Item 14B on the application was not completed. (See Exhibit Number 3.) In her statement dated June 25, 1969, Belmira Lucas advised that Robert Cuffee was unable to support the children from the end of 1967 until his death in 1968. (See Exhibit Number 19.) In her statement regarding contributions dated June 25, 1969, she advised that Robert Cuffee stopped contributing to the support of these children in 1967, that there was a break in his contribution to the support of these children during 1967 and 1968 and that this break was due to his ill health. (See Exhibit Number 19.) It is of some significance that these statements were signed by Belmira Lucas prior to the date that she received the reconsideration determination and that since she received the reconsideration determination the information supplied by her has changed. In two statements signed by Belmira Lucas, one of February 23, 1970 and one on April 21, 1970, she advised that after she and Robert Cuffee had separated he would visit with her at least two or three times a week to see his children and that he gave at least $20 to $25 a week for their support. (See Exhibits 10 and 11.) It is significant that at the hearing this lady testified that Ruby Lucas obtained money from her father when she, Ruby Lucas, went to visit her father at his mother's house. Belmira Lucas testified that Robert Cuffee never came to visit the children in her house after the separation, that he would sometimes come across the street from the house and that he did not know what apartment she was living in. In addition to the inconsistencies in Belmira Lucas' statements, the information supplied in Exhibits Number 15 and 16 casts some further doubt on the question of support. These exhibits are affidavits obtained from Clara Perry and George Harold on January 26, 1970. In each of these affidavits it is stated that Mr. Cuffee often visited the home of Belmira Lucas, both before the birth of these children and afterwards, acknowledged the children to be his own, gave them gifts, gave her money from time to time for the support of these minor children, and frequently acknowledged that he was

the father of the children. From this information there is even some doubt cast on whether or not Robert Cuffee ever lived regularly with Belmira Lucas. Of course the present allegations of Belmira Lucas with reference to the question of support is further weakened by the information supplied by Madeline Cuffee, the mother of Robert Cuffee. In a statement which is set forth as Exhibit Number 12 she advised that her son lived with her, that she fed him and that occasionally she gave him small sums when he was not working.

The fact finder is not compelled to believe the testimony of an interested witness even if it is not squarely contradicted. Credibility determinations rest with the Secretary and the finality of his findings also extends to reasonable inferences which may be drawn from the evidence. The Hearing Examiner is unable to conclude that Robert Cuffee was contributing to the support of Ruby M. Lucas and Darin E. Lucas at the time that he died. He finds specifically that he was not so contributing at that time and therefore finds that Ruby M. Lucas and Darin E. Lucas are not entitled to children's insurance benefits on the earnings record of Robert E. Cuffee.

/s/ George V. Flavin
GEORGE V. FLAVIN
Hearing Examiner
Room E-130
John F. Kennedy Federal Building
Boston, Massachusetts

Date May 6, 1971

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
P.O. Box 2518, Washington, D.C. 20013

[HEW Emblem]

Refer to: HA:C

039-12-1375

Bureau of
Hearings and Appeals

Jan. 5, 1972

ACTION OF APPEALS COUNCIL ON
REQUEST FOR REVIEW

Mrs. Belmira Lucas
142 Dodge Street
Apartment 3-D
Providence, Rhode Island 02907

Dear Mrs. Lucas:

Your request for review of the hearing examiner's decision has been carefully considered by the Appeals Council. The Council's consideration of your request has included all the evidence in your case, the law and regulations applicable to your claim, the hearing examiner's evaluation of the facts and the reasoning in his decision, and your reasons for believing your claim should be allowed. Evidence in addition to that which was before the hearing examiner has been received by the Appeals Council.

The Appeals Council has concluded that the decision of the hearing examiner is correct. Further action by the Council would not, therefore, result in any change which would be of advantage to you. Accordingly, the hearing examiner's decision stands as the final decision of the Secretary in your case.

If you desire a review of the hearing examiner's decision by a court, you may commence a civil action in the district court of the United States in the judicial district in which you reside *within sixty (60) days* from this date. See section 205(g) of the Social Security Act, as amended (section 405(g), Title 42, United States Code). If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant.

Sincerely yours,

Carl Monk
Member, Appeals Council

cc:
Mr. Thomas W. Pearlman
Attorney at Law
Providence, Rhode Island 02907

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL
REMANDING COURT CASE TO
ADMINISTRATIVE LAW JUDGE

In the case of

Belmira Lucas
(Claimant)

Robert E. Cuffee
(Wage Earner)

Claim for

Child's Insurance Benefits
039-12-1375
(Social Security Account Number)

The United States District Court has remanded this case to the Secretary of Health, Education, and Welfare for further administrative action. The Appeals Council hereby vacates its denial of the claimant's request for review and remands this case to an administrative law judge of the Bureau of Hearings and Appeals for further proceedings.

On remand, the claimant shall be provided adequate opportunity to comment on any additional evidence, to submit material evidence, to raise pertinent objections, to examine and cross-examine witnesses, and to propose findings of fact and conclusions of law. Upon completion thereof, the case shall be returned with a recommended decision to the Appeals Council for its decision. A copy of the recommended decision shall be sent to the claimant.

That because the court has ordered that the administrative proceedings shall be concluded within 3 months of

March 2, 1973, the administrative law judge shall return his recommended decision to the Appeals Council no later than May 4, 1973.

The claimant will be given the opportunity to file with the Appeals Council, within 10 days from the date of the recommended decision, briefs or other written statements of exceptions and comments as to applicable facts and law. After the 10-day period has expired, the Appeals Council will review the record and issue its decision.

APPEALS COUNCIL

/s/ Carl Monk
Carl Monk, Member

/s/ John W. Chambers
John W. Chambers, Member

Date Mar. 14, 1973

[180] (The following is a transcript of the supplemental hearing held before Anthony J. Iacobo, an Administrative Law Judge of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare on April 3, 1973 at Providence, Rhode Island, upon a remand of the Appeals Council, Washington, D.C. pursuant to an Order of Remand, dated March 2, 1973, by the United States District Court for the District of Rhode Island, in the case of Belmira Lucas, claimant, in behalf of Ruby M. Lucas and Darin E. Lucas, based on the earnings record of Robert E. Cuffee, deceased wage earner, social security account number 039-12-1375. The claimant, Belmira Lucas, appeared in person accompanied by her daughter, Mrs. Gail Silva, and was represented by her attorney, Thomas W. Pearlman.)

(The hearing commenced at 10:15 a.m. on April 3, 1973.)

OPENING STATEMENT BY THE ADMINISTRATIVE LAW JUDGE:

JUDGE: The hearing will come to order. This case is before the Administrative Law Judge by an Order of Remand of the Appeals Council, dated March 14, 1973, authorizing the taking of further evidence in this case pursuant to an Order of Remand, dated March 2, 1973, of the United States District Court for the District of Rhode Island. Who appears for the claimant, Mrs. Belmira Lucas?

ATTORNEY: Thomas W. Pearlman, 705 Industrial Bank Building, Providence, Rhode Island. I am a member of the Rhode Island bar.

JUDGE: Thank you, Mr. Pearlman. Now to recite basically the history of this proceeding to the present time. The claimant filed an application for surviving child's insurance [181] benefits in behalf of Ruby M. Lucas and Darin E. Lucas on October 24, 1968. This claim was denied initially in September 1969. The denial was affirmed on reconsideration the following year

and the claimant filed a request for hearing. After a hearing was held the application was denied and a decision issued by another Administrative Law Judge. At that time the title was Hearing Examiner. On May 6, 1971 the decision was affirmed, in effect, by the Appeals Council which denied a Request for Review of the decision. From that action an Appeal was taken before the United States District Court for the District of Rhode Island which resulted in the instant supplemental hearing. The purpose of the supplemental hearing is for the taking of additional evidence and findings as to whether a valid common-law marriage existed between Belmira Lucas and Robert Cuffee such as to cause Ruby M. Lucas and Darin E. Lucas to fit within the definition of child under the appropriate Section of the Social Security Act. Is that your understanding of the court's Order of Remand, Mr. Pearlman?

ATTORNEY: Yes, your honor.

JUDGE: Now, I understand that in addition to the claimant, her daughter, Mrs. Gail C. Silva, is going to be testifying as well. Is that correct?

ATTORNEY: Yes, your honor.

[182] (The claimant, BELMIRA LUCAS, and witness, MRS. GAIL SILVA, duly sworn.)

JUDGE: Now, counsel, you had an opportunity to review these two additional exhibits to be added to the exhibits of record and they have been marked, to continue the enumeration, Exhibit 29 which is a telephone conversation recorded on December 5, 1968, and Exhibit 30 dated June 11, 1970 which is a statement from The Providence Journal and The Evening Bulletin, and I understand that you have no objection to these being received into the record?

ATTORNEY: Right, that is correct.

JUDGE: Exhibits 29 and 30 are received into the record. Do you have any documents to submit other than the brief that you have submitted which will be included as part of the procedural record although not as exhibit as such?

ATTORNEY: Well, your honor, other than the law of the State of Rhode Island which, I think, is contained in my brief and I want to state on the record an important attitude of the State of Rhode Island which is contained in the brief, Sections 15-8-21 of the General Laws of the State of Rhode Island of 1956, as Amended, which states as follows: "Illegitimate children shall become legitimatized by the subsequent marriage of their parents to each other and the issue of marriage is declared null in law shall nevertheless be legitimate" in this case. That's [183] been embodied in our case. I think it would be important in the consideration of—I am reserving my right to present any further documents which the court might deem necessary but at this time I don't have anything else.

JUDGE: Well, one thing comes to mind before I turn the case really over to you for you to present your evidence Mr. Pearlman, and that is I would anticipate there would be a death certificate showing that Mr. Lucas did die and the date and place he died.

ATTORNEY: We certainly would furnish that. That's a matter of public record. Might I inquire from my client? Where did he die? (Turning to claimant.)

CLAIMANT: He died in Tiverton, Rhode Island.

ATTORNEY: We can furnish that.

JUDGE: In where?

CLAIMANT: Tiverton, Rhode Island.

JUDGE: His date of death?

CLAIMANT: January 19, 1965.

ATTORNEY: I would agree that would be relevant and I'd be happy to furnish that to your honor.

JUDGE: All right and inasmuch as you are as cognizant [184] as I am of the limitations that the court has placed on the amount of time that this proceeding should continue at the Administrative level, I hope to receive this document from you with 7 days.

ATTORNEY: All right.

JUDGE: Since we are on this topic, will you state your name for the record so as to identify yourself? (Addressed to Claimant.)

CLAIMANT: Belmira Lucas.

JUDGE: You gave the date that Mr. Lucas died. How did you learn that information?

CLAIMANT: Well, I learnt that through his first cousin's wife. She notified me of his death.

JUDGE: When was that?

CLAIMANT: The day that he died, the date that he died.

JUDGE: Did you ever inform Mr. Cuffee of this information?

CLAIMANT: Yes, he was well aware of it.

JUDGE: Was this around that time or when?

CLAIMANT: Well, he knew about it the same day that I knew about it.

JUDGE: In other words you learned about it and told him?

CLAIMANT: Yes, he knew about it.

EXAMINATION OF CLAIMANT BY ATTORNEY:

Q Would you please state your address?

[185] A 142 Dodge Street, Providence, Rhode Island.

Q And besides the name of Belmira Lucas have you been known by any other name?

A I have been known by Mrs. Cuffee.

Q And did you live with Mr. Robert Cuffee?

A Yes, I did.

Q What dates?

A I lived with him for 18 years from 1948 to 1966.

Q Did you both hold yourself out as husband and wife?

A Yes, we did.

Q And among family and friends how were you known?

A I was recognized as his wife.

Q And did you become close during those 18 years to his family, Madeline Cuffee and his aunt?

A Very much so.

Q And could you tell the court in what way you became close to his family?

A Well, I mean we were always together. Wherever we went they were always with us. In our holidays, birthdays or anything that came up, I mean, we were always together.

Q Did you sleep in the same bedroom as Mr. Cuffee those 18 years?

A Yes, we did.

Q And did the children, Ruby and Darin, refer to you both as father and mother?

[186] A Yes, they did.

Q Now, where did you spend your Christmas days during those 18 years?

A Our Christmas' were spent with his mother and his aunt.

Q What are their names?

A Madeline Cuffee and Hazel Cuffee.

Q And during those 18 years where was Thanksgiving spent?

A Thanksgiving was spent at our house.

Q And who was present from his family, if any?

A His mother and his aunt were the only 2 that he had.

Q He was an only child?

A He was an only child.

Q Now, could you tell us, there were 2 children of this marriage, is that right?

A Yes, there were.

Q And could you tell us how—what were their names and birth dates?

A Ruby Marie was born October 28, 1953; Darin Edward was born October 28, 1960.

Q Now, wasn't Ruby born February 7, 1953?

A Yes, February 7.

[187] Q Didn't you get the month and the date wrong?

A Yes.

Q Now, could you tell us how Ruby and Darin got their name?

A Well, Ruby was named after a very close friend of Robert's.

Q Robert Cuffee?
A And Darin Edward was named by his father.
Q What was Robert Cuffee's middle name?
A Edward.
Q And is that where Darin Edward got his middle name?
A That's where he got his middle name.
Q Were both these children born in the Lying-In Hospital?
A Yes, they were.
Q And did Mr. Cuffee visit you and the children at the hospital?
A Yes, he came every night.
Q Now, in 1950 did Mr. Cuffee buy you a ring symbolizing your marriage to him?
A Yes, he did.
Q And do you still wear this ring?
A Yes, I do.
Q Do you have it on now?
A Yes, I have.
[188] Q And that is the ring—
A Both of them.
Q Both those rings that you have on your marriage finger were bought for you by Mr. Cuffee?
A Robert Cuffee.
Q Have you worn them continuously?
A Yes.
Q Now, you have just showed us two rings on your fingers. Have you worn those rings continuously since 1950?
A I've always worn them.
Q And they were purchased for you by the late Robert Cuffee, is that correct?
A Yes; they were.
Q Now, your former husband, Raymond Lucas, when did he die and where?
A January 19, 1965 in Fogland, Tiverton, Rhode Island.
Q At the time of his death were you living as husband and wife with Robert Cuffee?
A Yes, I was.

Q And did you continue to live as husband and wife with Robert Cuffee for a period of approximately 2 years thereafter?
A Yes, I did.
Q What caused Robert Cuffee to leave your home in 1966?
[189] A Well, he was drinking excessively and became violent with his drinking and I just couldn't take the chance of having the children hurt through his drinking and we just couldn't make it no more.
Q Now, did Mr. Cuffee have charge accounts and other purchases on your behalf as husband and wife?
A Yes, he did.
Q Could you tell us what they were, if any?
A Well, he had charge accounts in clothing stores. He had a fellow that used to come to the house, shoe salesman. He had bought a stove and mixer and various other things for the house.
Q Now, were there also rent receipts?
A Yes, there were.
Q And who were these rent receipts given to you by?
A Isadore Schectman.
Q And he was your landlord?
A He was.
Q Did Robert Cuffee after he stopped working for The Providence Journal do paper, painting and other work for Mr. Schectman?
A Yes, he did.
Q Mr. Schectman owns about 100 houses—in the—
A In and around there.
[190] Q —in around the core city of the city of Providence, is that right?
A Yes.
Q And was your husband on his payroll from 1960 almost to his death at various stages when he was well enough to work?
A Yes.
Q As far as you know, however, Mr. Schectman didn't deduct social security taxes from him? Is that right?
A I don't think he did.

Q Did he pay him in cash?
A Yes, he did.
Q Now I direct your attention to some exhibits, Mrs. Lucas.

(At this point, there ensued an off-the-record discussion.)

JUDGE: We were off the record for a moment in order to have Counsel use his own set of exhibits so that I could follow along with the official ones.
ATTORNEY: Are we on the record?
JUDGE: Yes.

ATTORNEY RESUMES EXAMINATION OF CLAIMANT:

Q Directing your attention, Mrs. Lucas, to Exhibit 3 of page 91 of the transcript, a document dated apparently October 24, 1968. Is that your true signature on the—
A Yes, it is.
Q —last page of this 4 page exhibit? Is that your [191] true signature, Mrs. Lucas?
A Yes, yes it is.
Q And I direct your attention to the hand written language which appears under the remarks in Item 24 on the last page of Exhibit 3, also numbered 91 and dated October 24, 1968 and ask you whose hand writing, if you know, appears there. Is that your handwriting, Mrs. Lucas?
A No, it is not.
Q Is that the information which you furnished the Social Security Officer at the time?
A Yes, it is.
Q And I direct your attention to the language which says as follows, I quote; "I lived with Robert Cuffee in a commonlaw union. The children are of this union. I started living with the WE in 1948 and separated from him in 1966." Did you furnish that information to the Social Security Office at that time?
A Yes, I did.

Q Did you have a lawyer at that time?
A No, I didn't.
Q Now, when did Mr. Cuffee die?
A In June of 1968.
Q And about how long before that, his death, did you separate from him?
A About a year and a half.
Q Now, your former husband, the late Raymond Lucas, who died on January 19, 1965 in Tiverton, Rhode Island, what was [192] his physical condition prior to his death?
A He had had a shock all on one side.
Q Had that disabled him for a long period of time?
A Oh, yes it did.
Q When did he have that shock?
A Around 1949-1950.
Q And have you ever lived with your former husband after 1948?
A No, I didn't.
Q Now, Mrs. Lucas, I direct your attention to Exhibit 26 which appears at page 125 of the former transcript. It appears to be a document dated November 1, 1968, signed by Clara Carle also known as Mrs. Clara B. Perry. Could you tell the Court if you know Clara Carle?
A Clara Carle is a cousin of Robert Cuffee.
Q And did she consider you and Robert Cuffee as husband and wife?
A Yes, she did.
Q And were you held out as husband and wife to her?
A Yes, we were.
Q Was she at any of the family affairs with you and Robert Cuffee that you described while you were living together those 18 years?
A She was always at the house.
Q I direct your attention to Exhibit 21 at page 119 [193] of this transcript which appears to be dated January 7, 1969 and signed by a Lloyd E. Carle. Do you know Lloyd Carle?
A Lloyd Carle was a first cousin of Madeline and Hazel Cuffee.

Q And did he know you and Mr. Cuffee to be as husband and wife?

A Yes, he did.

Q And he knew that you were both the parents of Darin and Ruby Lucas, is that right?

A Yes.

Q I direct your attention to Exhibit 16 at page 110 of this transcript. Could you tell the Court if you recognize this Exhibit?

A This is the funeral services for Robert Cuffee.

Q Is that the obituary notice?

A That is the obituary notice.

JUDGE: Excuse me, is that Exhibit 16?

Q I'm sorry on my copy I can hardly read the number. It could be 17 but it is page 110. Now did you obtain that obituary notice in the paper?

A I obtained it at the Providence Public Library.

Q And who furnished the information for this obituary notice, did you write it?

A Madeline Cuffee furnished that.

[194] Q And that's the mother of the late Robert E. Cuffee. Now I direct your attention to the words: "Mr. Cuffee died on Tuesday. His survivors include two children, Ruby Marie and Darin Edward Cuffee." Is that the way some people referred to your children as Ruby and Darin Cuffee?

A Yes, they do.

Q Now, I notice that this obituary did not mention you as the widow of Robert E. Cuffee. Can you explain that to the Court?

A Well, at the time we had had a fallen out over us.

Q Who is we?

A His mother and myself.

Q His mother, Madeline Cuffee?

A Yes.

Q And what was the problem that you had with Madeline Cuffee, the mother of Robert Cuffee at the time of his death?

A Well, for one thing she was a little disturbed which I found out later on that I was a Catholic, because they were Baptist which I didn't know had any bearing on the

feelings and, secondly, I guess, he must have been giving her quite a rough time and she was taking it out on me.

Q She blamed you for his last illness?

A Well, not so must for his last illness but through his drinking, he was unbearable even with her and I imagine she felt [195] that if I had still had him she would not have to have put up with him.

Q Did you ask her to help you out filing this claim for Social Security benefits and give information to the Social Security?

A No, I did not go no where near her.

Q I see, but you learned that she did not want to assist you in anyway. Is that it?

A Well, that's what I came to the conclusion of.

Q I direct your attention to Exhibit 16 at page 108. It appears to be a statement signed by George Hareld H-A-R-E-L-D, on January 26, 1970 and ask you if you know a George Hareld?

A Yes, I know a George Hareld. He was an associate of Robert Cuffee. They were constantly together. In fact, he was with Robert Cuffee the morning that Robert Cuffee died.

Q And did he treat you as you were both husband and wife?

A Yes, he did.

Q And did he consider the children, the children of both of you?

A Oh, yes.

Q And he was very friendly with Robert Cuffee right up until—

[196] A Very much so.

Q I direct your attention to Exhibit 6 at page 104 which appears to be dated January 24, 1970 and ask you if you recognize that signature at the bottom of that page?

A That's Madeline Cuffee.

Q Did I say Exhibit 11? It should be Exhibit 12 which we are directing at, January 24, 1970.

JUDGE: It is one of April 21, 1970 which is Exhibit 11.

Q Marked page 104 on this document.

JUDGE: OK. This doesn't have a date that I see. Oh, yes, thank you. It's either 1-24 or 7-24.

Q And in 1970 had you become friends with Madeline Cuffee?

A No, by no means.

Q She was still refusing to contact you?

A That's right.

Q Did she have any contact with your children after your first son's death in June of 1968?

A I can't recall whether or not the children went to visit her. I can't say.

Q But she stopped coming over to your house?

A Yes, she stopped coming to the house.

Q Now, this says, "she did live with blank for several years up to the time of his final illness." Do you know what she meant by that?

[197] A That he had lived with me for several years up until his illness, his final illness. It was during his final illness that he was home with her.

Q And she said in that statement, "I allowed my son to live with me for awhile; I fed him; I occasionally gave him small sums when he wasn't working. I have no records of any sort and I am a sick woman unable to recall any periods of time, exact dates or amounts of money." How long did Mr. Cuffee live with his mother, if you recall, prior to his death in June of 1968?

A A little over a year.

Q Now, I direct your attention to Exhibit 11 at page 103 which is dated April 21, 1970. Is that your signature on the bottom of that page 103 of that 2 page Exhibit?

A Yes, it is.

Q And I direct your attention to the sixth line from the top of that exhibit. Did you furnish that information which I quote as follows: "Mr. Cuffee and I had lived together as man and wife from 1946 to about December 1965."

A That date is wrong.

Q Which date is wrong.

A 1965.

Q That should have been what date?

A 1966.

[198] Q But it is correct that you lived together as man and wife during that period of time?

A Yes.

Q That's all.

ADMINISTRATIVE LAW JUDGE EXAMINES CLAIMANT:

Q Now let me say, Mrs. Lucas, you lived with Mr. Cuffee and held yourselves out to be husband and wife from the time that you started to live together. Is that correct?

A Yes, it is.

Q And that's when he gave you the two rings that, if I may, identify them for the record I would describe as the usual type of engagement ring and marriage ring. Is that correct?

A Yes, it is.

Q One being plain and the other having a stone in it. Did your relationship with each other or to the community generally change in any way after your former husband, Mr. Lucas, died?

A Well, there was nothing to change because in the community they did not know Raymond Lucas. They have only known Robert Cuffee and I.

Q And in answer to some of the questions counsel put to you, you indicated that you were known as Mrs. Cuffee in the community. Is that correct?

A Yes.

Q Did anyone ever call you, Mrs. Lucas?

[199] A The only time that I was called Mrs. Lucas would be to the children's friends because they knew my older children as Lucas. So some of their friends when they would speak to me—

Q Now, you say your older children, would you identify for me who the older children are?

A I have Gilmore Lucas, Gail, which is Mrs. Silva now. I have Jane, which is Mrs. Johnson. Now she is Mrs. Johnson.

Q Jane?
A Yes, Jane and James.
Q That's four children?
A Yes, four children.
Q Gilmore, Gail, Jane and—
A —and James.
Q —and James. And did these children when they were younger reside with you and Mr. Cuffee?
A Yes, they did.
Q And so they had the name Lucas?
A Lucas.
Q I see. What was the reason when the two children born of your union with Mr. Cuffee that you gave their name in the hospital record as Lucas rather than Cuffee?
A Because I still was legally married to Raymond Lucas.
[200] Q Now, at the time that you were living with Mr. Cuffee and whether he left you and returned to his mother in '65 and '66, the point is that Ruby then was already of an age when she was going to school, is that correct?
A Yes.
Q And what was she known as?
A She went to school as Ruby Lucas.
Q And this was up to the time that Mr. Cuffee left to return to his mother's house? Is that correct?
A Yes.
Q And is that the same situation with Darin?
A With Darin.
Q All right. I have no other questions, thank you.
ATTORNEY: Mrs. Lucas, can you explain why the children went to school under the name Lucas? They required their birth certificates, is that correct?
CLAIMANT: Well, yes, their birth certificates was under Lucas.
ATTORNEY: So when you originally registered them they had to use the name, Lucas?
CLAIMANT: Yes.
ATTORNEY: That's all.

JUDGE: Do you wish to interrogate the other witness, counsel?
[201] ATTORNEY: Yes, she has been sworn, I believe?
JUDGE: Yes, she has.

ATTORNEY EXAMINES WITNESS,
MRS. GAIL SILVA:

Q What is your full name and address?
A Mrs. Gail Silva, 210 Belleview Avenue, Providence, Rhode Island.
Q How old are you?
A Thirty.
Q And when were you born?
A June 30, 1942.
Q As long as you can remember between 1948 and 1966, can you tell us anything about the relationship between Robert E. Cuffee and your mother?
A Well, at that age, you know, we just accepted things as they were and I always referred to him as my father, stepfather, you know to alleviate any questions from the children. You know, my friends in school, I said this is my father, you know and he always provided for us on birthdays and you could depend upon him for a lot of things that children like to collect, things you know, through their (unintelligible).
Q Well, a lot happened at that time, let's be specific. As far as Christmas holidays, could you tell us anything about that as far as Mr. Cuffee's family between 1948 and '66?
[202] A Are you speaking in terms of his mother and aunt?
Q Yes.
A They gave us a lot of beautiful gifts and you know they were aunt and so on. To be more specific like we used to spend a lot of nights there. You know that was a big joy of knowing them, having them as part of the family or being part of the family with them.

Q In other words, you and your brothers and sisters would actually spend time sleeping at Madeline Cuffee's home?

A Sure. That was a big treat.

Q Now, how about Thanksgiving?

A I don't remember too well. Like you know some Thanksgivings I thought we would spend at our house and other times we would spend at their house.

Q But during that time did you spend most of your Christmas and Thanksgiving holidays together with Mr. Cuffee's family?

A Right, yes.

Q Now, your natural father was Raymond Lucas, is that correct?

A Correct.

Q Did he ever come to visit your home between 1948 and 1966?

A No, he never visited us at our home.

Q And did you know anything about whether your mother [203] was divorced from him or anything like that or why she was separated from him?

A Are you speaking—

Q —of Raymond Lucas?

A Yes, I know, but at any particular period of time because that would be important?

Q Yes.

A Well, up to about 16—15, no, no, we never questioned that (unintelligible) of it. You know, later on we questioned the situation because we became more aware but prior to that no, we didn't.

Q You knew that your natural father had a shock and was totally disabled, is that right?

A Yes, but never seeing him and knowing him personally it didn't affect our situation. We referred more to Mr. Cuffee as you know more as a paternal image as opposed to Raymond Lucas.

JUDGE: And did you treat Mr. Cuffee as your stepfather in every way up until his death?

A Yes.

Q As a matter of fact do you know whether any of your family still visit the grave of Mr. Cuffee?

A We do. Yuh, I take my sister, a lot, Ruby, yuh we go up, and Eddie.

Q You mean Ruby and Darin Edward.

A Right.

[204] Q You called him Eddie?

A Right. It's very hard to get the names 'cause we have nicknamed everyone and to use proper names is rather difficult.

Q And they still visit his grave?

A Yes.

Q Does your mother visit the grave as well?

A Please? I don't know. I don't really know.

Q Did Mr. Cuffee and your mother hold themselves out as husband and wife to the community?

A Yes, my stepfather.

Q And that continued right after the death of your natural father, Raymond Lucas?

A Right.

Q And were they known by many people as Mr. and Mrs. Cuffee?

A Yes.

Q That's all.

JUDGE: In this last question as put to you—and were they known by many people as Mr. and Mrs. Cuffee, were they known to other people as not Mr. and Mrs. Cuffee?

A I can see the inconsistency of that. While I can assume that my mother's brothers and sisters knew there was no [205] wedding they knew that she wasn't legally married to him although when all the families both maternal and paternal both on our mother's side, brothers and sisters, all accepted Bobby or Mr. Cuffee as her husband. You know, nobody questioned the fact, but if they were referring they would refer to her as Mrs. Lucas. But like in terms of our immediate environment you know, anyone associated with us coming up it was always Mrs. Cuffee, you know. All affairs that we attended most of them would be addressed as Mrs. Cuffee.

JUDGE: Really, there's a question in my mind as to why Mr. Cuffee left the household to go to his mother. Could you explain that for me, please.

CLAIMANT: I thought I had explained that before. Toward the end he had gotten so that he was drinking excessively and when I say excessively it meant from morning til night. Then he would become violent and it was a constant all night hassle. Well, I started losing weight and I found that my nerves were getting quite bad from this hassle and before it affected the children I decided the best thing for him to do was to go home to his mother and this is where he went and this is where he finished living out his drinking bouts with her.

JUDGE: I see. All right thank you very much. I recall that testimony as you're saying it. Counsel, is there any statement you wish to make or are you going to rest on the brief that you submitted at the beginning of the hearing?

[206] ATTORNEY: I would like to rest on the brief and I'd like to just make one other comment which I didn't make in the brief. I think I've covered everything else. You see, Raymond Lucas had a shock in 1950 and was sick and disabled. This would explain the reason why in Rhode Island his natural wife wouldn't be able to divorce because at that time you would have to have a guardian appointed and the Rhode Island Family Courts almost never would grant a divorce when a person was incompetent of defending himself. That was the status of the Law at that time and then later on by the time he died I think (unintelligible) a number of our cases in Rhode Island, the most recent one Sardonis versus Sardonis which is quoted in my brief—

JUDGE: Please proceed, counsel.

ATTORNEY: —which was decided by Rhode Island Supreme Court in 1970 after this original application was made in this Social Security case and cited at the bottom of page 4 of my brief. Both parties had a legal impediment for marriage at the time they entered into the common-law union. Both parties were actually married and their divorces hadn't become final and so forth. Nevertheless, the Court deemed there to be a common-law

marriage immediately upon the removal of the legal impediment and there are other cases cited by Judge Pettine, had they established this relationship of a common-law husband and wife, and these things unfortunately happen. I can understand [207] the psychology of why didn't they marry immediately; go through a formal ceremony. I think what happens is most of their family and friends and those who are very close consider them married already. So they go through a formal marriage ceremony it becomes embarrassing at that time when they lived together so long. I think that's the situation here as in the other Rhode Island cases and under Rhode Island law they were legally married even though they hadn't a ceremonial marriage. Now, once that takes effect then of course the children become legitimated and it relates back as set forth in the Statutes and that in sum and substance is our position.

JUDGE: Thank you very much. As I stated earlier you have 7 days in which to submit a death certificate and any other documentary material you may wish to submit, after which I will close the record and arrive at a recommended decision which I will submit to the Appeals Council. A copy will be sent to you and pursuant to the Appeals Council order you will have ten days in which to submit any further pleading to the Appeals Council that may be generated from my recommended decision. There being nothing further the supplemental hearing in this case is closed.

(The hearing was closed at 11:05 a.m. on April 3, 1973.)

JUDGE: The record in this case was reopened at Boston, Massachusetts on April 9, 1973, to admit in evidence [208] Exhibit number 31, which is a letter signed by Thomas W. Pearlman, Esq., dated April 5, 1973 and accompanying copy of a death certificate of Raymond Lucas and a copy of a recent decision in the case of Sardonis vs. Sardonis. There being nothing further, the record was closed in Boston, Massachusetts on April 9, 1973.

CERTIFICATION

I have read the foregoing transcript and hereby certify that it is a true and complete record of the hearing.

/s/ Margaret E. Kirby
Hearing Assistant

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE SOCIAL SECURITY ADMINISTRATION BUREAU OF HEARINGS AND APPEALS

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION

In the case of

(Claimant)

Belmira Lucas o/b/o Ruby M. Lucas and Darin E. Lucas
Robert E. Cuffee

(Wage Earner) (Leave blank if same as above)

Claim for

Child Insurance Benefits

039-12-1375
(Social Security Number)

This case is before the Administrative Law Judge by an order of remand of the Appeals Council, dated March 14, 1973, authorizing the taking of further evidence in this case pursuant to an order of remand, dated March 2, 1973, of the United States District Court for the District of Rhode Island.

Claimant filed an application for surviving Child Insurance Benefits on behalf of Ruby M. Lucas and Darin E. Lucas on October 24, 1968. This claim was denied initially on September 13, 1969; the denial was affirmed on reconsideration on August 21, 1970, and claimant filed a request for hearing. After a hearing was had, the application was denied and a decision issued by another Administrative Law Judge (formerly called Hearing Examiner) on May 6, 1971. The decision was affirmed on appeal by the Appeals Council which denied review of said decision. As a result of this action, an appeal was taken before the United States District Court

for the District of Rhode Island, which resulted in the instant supplemental hearing.

The purpose of the supplemental hearing was for the taking of additional evidence and findings as to whether a valid common law marriage existed between Belmira Lucas and Robert Cuffee such as to cause Ruby M. Lucas and Darin E. Lucas to fit within the definition of 'child' under Section 216(h)(2)(A) of the Social Security Act, as amended.

SUMMARY OF THE FACTS

All the evidence of record and the testimony from the prior hearing have been reviewed and considered. The findings of fact made by the prior Administrative Law Judge are incorporated herein by reference.

In supplementing her testimony, claimant testified that she learned that Mr. Raymond Lucas, her lawful husband, died on January 19, 1965, she obtained this information on the date of his death from one of his relatives. She stated that she imparted this knowledge to Robert Cuffee at the same time she learned of it. Claimant had known that Mr. Lucas had been ill and incapacitated for approximately 15 years prior to his death. Her relationship with Mr. Cuffee, insofar as the community was concerned, did not vary with the death of Mr. Lucas. In describing her relationship with Mr. Cuffee and with his family, claimant stated that approximately two years after they began living together, that is approximately in 1950, the deceased wage earner purchased and presented her with an engagement ring and a wedding ring which the claimant was wearing at the hearing on the third finger of her left hand. It was noted that some holidays were spent by claimant and the deceased wage earner at the deceased wage earner's mother's house. Claimant and all the children were entertained by the deceased wage earner's mother, Mrs. Madeline Cuffee, and his aunt, Miss Hazel Cuffee. On other holidays the Cuffee's would spend them with the claimant and Robert Cuffee in their home. Claimant indicated that her relatives and the relatives of the deceased wage earner, while treating the union as that of husband and wife, recognized that they had not married and that she was incompetent to marry due to an undisolved lawful union with Mr. Raymond Lucas. The relationship between Madeline Cuffee and Hazel Cuffee, on the one hand, and claimant, on the other, came to an abrupt halt when Robert Cuffee resumed living with his mother. Claimant stated she was unsure whether the children, Ruby and Darin, visited Madeline Cuffee after Robert Cuffee's death.

Claimant testified that the two children involved herein, Ruby M. and Darin E. Lucas, were the children of the deceased wage earner, Robert Cuffee. However, recognizing that she was not lawfully married to Mr. Cuffee, she gave the last name of her lawful husband, "Lucas," to the children born of her union with the deceased wage earner. It is noteworthy that the name of Ruby's father was left blank in the certificate of birth, while that of Darin E., born after Ruby on October 28, 1960, lists Raymond Lucas as the father. As a consequence, when the children were sent to school they used the surname Lucas, in conformity with their certificates of birth. She acknowledged that friends of her four children from her marriage with Raymond Lucas, called her Mrs. Lucas, although she was residing with Mr. Cuffee at the time. Nevertheless, she asserts that in the neighborhood, generally, and among friends she was known as Mrs. Cuffee. She noted that Darin's middle name was the same as his father, Edward, and Ruby was named after one of Robert Cuffee's close friends.

This testimony was generally corroborated by the testimony of Mrs. Gail C. Silva, the claimant's daughter by her marriage with Mr. Lucas. Mrs. Silva testified that she considered the deceased wage earner as her stepfather. He gave her, and the other children, gifts and other presents from time to time, and confirmed that she visited her stepfather's mother and aunt and spent nights at their residence. She acknowledged that at times her mother was referred to by some as Mrs. Cuffee, but at

other times her mother was addressed by others as Mrs. Lucas. "Most" invitations for social functions were addressed to "Mrs. Cuffee."

In 1965 and 1966 the deceased wage earner became increasingly more afflicted with alcoholism and concomitant with the excessive drinking he became excessively violent. As she was fearful for the safety of the children claimant became increasingly disturbed with Mr. Cuffee's conduct and thus sent him to live with his mother.

COUNSEL'S ARGUMENT

Counsel indicated that no formal wedding ceremony or other steps were taken subsequent to the death of Mr. Lucas in order to avoid embarrassment. For that reason no ceremonial marriage had taken place between the deceased wage earner and the claimant after the impediment was removed. Nevertheless, he urged that their relationship be viewed as a common law marriage and from this would flow the entitlement to benefits of Ruby M. and Darin E. Lucas, as legitimate children.

EVALUATION OF EVIDENCE

The central issue to be resolved is whether or not Belmira Lucas, the claimant herein, entered into a relationship with the deceased wage earner, Robert E. Cuffee which, under the law of the State of Rhode Island, could be considered a common-law marriage. If this is established then the children, Darin E. and Ruby M. Lucas would be considered the legitimate offspring of said union and entitled to surviving child's insurance benefits. It is clear that common-law marriage is recognized in Rhode Island. *Holgate* v. *United Electric Railways Company*, 47 R.I. 337. The finding of such relationship may be shown by circumstantial evidence but such evidence must be clear and persuasive. The same case also notes that ". . . where parties who are incompetent to marry enter into an illicit relation with a manifest desire and intention to live in matrimonial union rather than in a state of

concubinage, and the obstacle to their marriage is subsequently removed, their continued cohabitation raises a presumption of an actual marriage immediately after removal of the obstacle, and warrants a finding to that effect," at 340. In a case dealing with the corollary of this principal, it was stated that if the parties enter into a meutricious relationship, in the absence of clear proof to the contrary, the presumption of law is that such meretricious relationship continued. *Ibello* v. *Sweet*, 47 R.I. 480.

In the instant case the facts reveal that claimant, Belmira Lucas, and the deceased wage earner, Robert E. Cuffee, knowingly entered into a meretricious relationship. In arriving at this conclusion the Administrative Law Judge is not unmindful of the fact that the deceased wage earner gave the claimant a so-called engagement ring and wedding ring approximately two years after their relationship started, and due consideration is given to claimant's various assertions. However, an important factor leading to the conclusion that the relationship was one of concubinage is the fact that the children born of the union were not given the surname of the deceased wage earner. They were given the surname of Belmira Lucas' first husband. In fact, Darin's birth certificate lists Raymond Lucas as the father. (Exhibit 19). These, it would appear, are more significant factors than a pair of rings, which may or may not be an empty gesture. Also of some significance is that during the period 1953 to 1960, when the deceased wage earner was an employee of the Providence Journal, Robert Cuffee gave his marital status as "single." (Exhibit 30). These factors when considered together with the fact that both Robert Cuffee and Belmira Lucas realized that they were not free to marry due to the continued existence of Belmira Lucas' lawful spouse, Raymond Lucas, requires the conclusion that both parties recognized that their relationship was illicit and there was no serious mutual intention of entering into a matrimonial relationship. In view of the foregoing, the presumption is that in the absence of clear and convincing

evidence to the contrary such meretricious relationship continued. *Ibello* v. *Sweet, supra.*

Examining the circumstances that transpired after the reported death of Raymond Lucas in January 1965, we see that Robert Cuffee and Belmira Lucas continued to live together. She continued to be known as Mrs. Cuffee to some and as Mrs. Lucas to others. The children, Ruby and Darin, continued to carry the name "Lucas." By late 1965, or sometime in 1966, claimant has given different dates but more recently asserts that it was sometime in 1966, Belmira Lucas and Robert Cuffee went their separate ways. Her testimony is to the effect that he became a severe alcoholic and to avoid any possible harm to herself or the children dispatched him to his mother to live. The deceased wage earner continued to reside with his mother for approximately one and a half to two years before his death.

In view of the established fact that Mr. Cuffee considered himself as "single" prior to the death of Mr. Lucas, the way his relationship with the claimant terminated in 1966 is more compatible with two people living in a concubinous state rather than a matrimonial one. Certainly the continuance of their cohabitation after the death of Raymond Lucas cannot lead to a conclusion any different from that drawn from their relationship prior to the death of Mrs. Lucas. Inasmuch as there was no demonstrable change in their relationship after the death of Mr. Lucas, the clear and convincing evidence required to overcome the presumption of a continuing illicit relationship is utterly lacking. It is recognized that in Robert Cuffee's obituary his mother gave the surviving children's name as "Cuffee." This is the only occasion where they are referred to by their father's surname, and there is no persuasive evidence that they were commonly known by that name after Mr. Lucas' death. Therefore, this must be considered as only one more instance of conflicting evidence, rather than clear and convincing circumstances requiring a conclusion different from that reached herein.

In his brief counsel cites the case of *Sardonis* v. *Sardonis*, 261 A. 22, as being similar to the instant case inasmuch as the man and woman, after the impediments to the creation of a common-law marriage were eliminated, were considered to have entered into a common-law marriage relationship merely by continuing their cohabitation. In that case children of the previously illegitimate union were deemed legitimated by the subsequent common-law marriage of the parents. The *Sardonis* case is predicated on facts which are not present here. In fact, quite the contrary is true. In *Sardonis* the two children born of the union prior to the legitimating of the relationship were given the name of their natural father, Sardonis, not the name of the mother's former husband. In addition, Mrs. Sardonis was known by that name, alone, from the time her relationship with Mr. Sardonis began. It is quite clear they intended to live as husband and wife although not lawfully free to do so at the start of their relationship. Consequently the very factors that led the Court to find the existence of a common-law relationship in the *Sardonis* case are not only lacking in this case, but the very opposite factors are present herein, necessitating an opposite conclusion.

In view of the conclusions reached herein that Belmira Lucas never entered into a common-law marriage with the deceased wage earner, the children, Ruby M. and Darin E. Lucas, are not embraced within the provisions of Section 216(h)(2)(A) of the Social Security Act, as amended, (42 U.S.C. Sec. 416(h)(2)(A)).

FINDINGS

The Administrative Law Judge has carefully considered the entire record in this case and based upon the preponderance of the credible evidence, in addition to the foregoing, makes the following specific findings:

1. Claimant, Belmira Lucas, and the deceased wage earner, Robert E. Cuffee, entered into a meretricious relationship on or about 1948.

2. After the removal of the impediment for a legitimate relationship by the death of Raymond Lucas on January 19, 1965, there were no manifest changes in the relationship between Belmira Lucas and Robert Cuffee.
3. The conduct of the parties both before as well as after the death of Raymond Lucas does not reveal that a serious matrimonial intention existed between the parties.
4. The meretricious relationship between Belmira Lucas and Robert Cuffee never changed to that of a common-law marriage.

RECOMMENDED DECISION

It is the recommended decision of the Administrative Law Judge that Ruby M. Lucas and Darin E. Lucas are not entitled to children's insurance benefits on the wage record of Robert E. Cuffee, deceased.

/s/ Anthony J. Iacobo
ANTHONY J. IACOBO
Adm. Law Judge
Room E-130
John F. Kennedy Federal Bldg.
Boston, Massachusetts 02203

DATE: APR 23, 1973

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

DECISION OF APPEALS COUNCIL

In the case of

Belmira Lucas o/b/o Ruby M. Lucas and Darin E. Lucas
(Claimant)

Robert E. Cuffee
(Wage Earner) (Leave blank if same as above)

Claim for

Child's Insurance Benefits

039-12-1375
(Social Security Number)

By order dated March 2, 1973, the United States District Court for the Eastern District of Rhode Island remanded this case (Civil Action Number 4845) to the Secretary of Health, Education, and Welfare.

The court in its opinion and order, after reviewing the record, concluded that the Secretary's decision that the claimant's children received no support or just occasional irregular support from the insured wage earner was supported by substantial evidence. Thus, the children did not meet the definition of "child" under 42 U. S. C. section 416(h)(3)(C)(ii). The court remanded the case for a determination as to whether under section 416(h)(2)(A), Belmira Lucas and the deceased wage earner, Robert E. Cuffee "had a common law marriage which the law would recognize as valid." Should it be proven that a valid common law marriage existed, Ruby Marie Lucas and Darin E. Lucas would become the legitimate children of Robert E. Cuffee and would qualify for surviving child's benefits under the requirements of 42 U. S. C. 402

(d). Thereafter, the Appeals Council remanded the case to an administrative law judge for a supplemental hearing in compliance with the court order, which was held on April 3, 1973.

On April 23, 1973, the administrative law judge issued his recommended decision finding that the claimant Belmira Lucas never entered into a common-law marriage with the deceased wage earner and thus, the children do not qualify under the provisions of 42 U. S. C. 416(h)(2)(A). The administrative law judge held that the claimant, Belmira Lucas and the wage earner entered into a meretricious relationship on or about 1948; that after the removal of the impediment to a legitimate relationship by the death of Raymond Lucas (the claimant's legal spouse) on January 19, 1965, there were no manifest changes in their relationship; that their conduct before as well as after the death of Mr. Lucas does not reveal that a serious matrimonial intention existed; and the meretricious relationship never changed to that of a common-law marriage. At the time of the issuance of his recommended decision, the administrative law judge advised the claimant and her attorney that they may submit to the Appeals Council any comments, exceptions or objections.

The administrative law judges' statements in the prior administrative decisions as to the pertinent provisions of the Social Security Act, the present issue in the case, and the evidentiary facts which were before them are incorporated by reference. By covering letter dated May 2, 1973, claimant's attorney, Mr. Thomas W. Pearlman, submitted a copy of his memorandum in the nature of an appeal to the administrative law judge's recommended decision. The case is now before the Appeals Council for final administrative decision.

The Appeals Council has carefully reviewed the record in the light of the claimant's objections and finds that they are for the most part merely indicative of a general disagreement with the administrative law judge's findings of fact and conclusions of law on the case as a whole.

Accordingly, all of the said objections, some of which are discussed below, are overruled.

Counsel contends that the administrative law judge has misconceived the nature of the common-law marriage under Rhode Island law and has misconstrued the evidence in this case. In his review of the evidence of record, including the testimony of the claimant and her daughter at the supplemental hearing and, the recommended decision of the administrative law judge, counsel, in his able presentation of the claimant's case has viewed the evidence in a light most favorable to the claimant. In doing so, however, he brought to the Appeals Council's attention and stressed those factors which tend to support the claimant's position. On the other hand, the administrative law judge and subsequently the Appeals Council, must weigh all the evidence, whether favorable or unfavorable to the claimant. As the triers of fact, they have the responsibility to decide which evidence is more persuasive and to resolve any conflict concerning the claimant's status in the instant case.

Counsel alleges that the finding, that the meretricious relationship never matured into a common-law marriage upon the death of the claimant's lawful husband because there were no manifest changes in the relationship, misconceives the requirements of common-law marriage under Rhode Island law. In support of his contention, he cites as his authority pertinent sections in American Jurisprudence concerning the general rule, the substantive law and the law of procedure pertaining to presumptions in states that recognize common-law marriages. The Appeals Council finds that the points raised have been adequately discussed in the administrative law judge's recommended decision including the reference to the Holgate case which was cited.

Counsel also contends that if the existence of a common-law marriage is this case is not sufficiently proved and thus if the children are found to be and remain illegitimate, a fundamental question is raised as to the constitutionality of a social security law which distinguishes

between legitimate and illegitimate children and denies equal protection as demanded by the 14th Amendment to the illegitimate children. Counsel specifically refers to section 216(h)(3)(c) of the Social Security Act and states that it deliberately excludes illegitimate children from benefits unless very rigorous conditions of paternity and living with or contributing to their support are met but which are not required in the case of legitimate children. The Appeals Council has attempted to comply with this specific instruction of the Court, and, in any event, the Appeals Council has no power to rule upon the constitutionality of the federal statute, which is the subject of its delegation to administer. The Appeals Council notes that the court's Opinion and Order states that ". . . this action shall be and is remanded to the Secretary for the taking of additional evidence and findings as to whether a valid common-law marriage existed . . ."

In the instant case, the claimant Belmira Lucas and the wage earner Robert E. Cuffee did not have ". . . a common law marriage which the law would recognize as valid," and thus the children do not qualify for child's benefits under 42 U.S.C. 416(h)(2)(A). Accordingly, the Appeals Council adopts the findings and conclusions in the recommended decision.

It is the decision of the Appeals Council that, the claimant is not entitled to children's insurance benefits on behalf of Ruby M. Lucas and Darin E. Lucas, under the provisions of the Social Security Act, as amended.

APPEALS COUNCIL

/s/ Carl Monk
Carl Monk,
Member

/s/ Norman S. Kerns
Norman S. Kerns,
Member

DATE: MAY 22, 1973

SUPREME COURT OF THE UNITED STATES

No. 75-88

F. DAVID MATHEWS, Secretary of Health, Education and Welfare, APPELLANT

v.

RUBY M. LUCAS, et al.

APPEAL from the United States District Court for the District of Rhode Island.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is set for oral argument in tandem with No. 74-6212, Norton V. Mathews.

October 6, 1975

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